

ADVISORY OPINION 1999-003

Any advisory opinion rendered by the Registry under subsections (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

March 4, 1999

Hon. William H. May, III
Patton-Henry for Kentucky Committee
P.O. Box 964
Frankfort, Kentucky 40602

Dear Mr. May:

This is in response to your February 1, 1999 letter in which you request an advisory opinion regarding activity associated with the Patton-Henry for Kentucky Committee ("Slate Committee"). You state that the Slate Committee has filed a statement of intent to accept public financing and subject itself to the limits established by KRS 121A.030. Your letter addresses whether each of the activities you describe would constitute a contribution. You explain that the activities proposed would be in cooperation with the Slate Committee.

The applicable statute is KRS 121A.010(11), which provides in pertinent parts:

(a) "Contribution" means any:

1. Payment, distribution, loan, deposit, or gift of money or other thing of value, to a slate of candidates, its agent, a committee, or contributing organization...
3. Goods, advertising, or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are furnished to a slate of candidates ...without charge, or at a rate which is less than the

rate normally charged for such goods and services, if the person furnishing the goods, advertising or services paid another person for their provision.

4. Payment by any individual other than the slate of candidates ... for any goods or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are utilized by a slate of candidates . . if the person making the payment paid another person for their utilization.

(b) Notwithstanding the foregoing meanings of “contribution,” it shall not be construed to include:

1. Services provided without compensation by individuals volunteering a portion or all of their time on behalf of a slate of candidates...
2. Expenditures by an individual other than a candidate in connection with an event held in the individual’s home when the individual expends less than three hundred dollars (\$300)...

(Emphasis added.)

1. If a Supporter independently arranges and holds an organizational meeting for other volunteers in that Supporter’s geographic region of the state and neither of the candidates on the slate, nor any member or agent of the Patton-Henry for Kentucky Committee, either attends or takes part in the preparation and organization of such an event and the Supporter incurs Expenditures in connection with such a meeting, such as those associated with phone calls, refreshments, postage for invitations and rental for the meeting place, would such Expenditures by the supporter constitute a “contribution” to the Committee if they exceed \$100?

Yes. As the Slate Committee is aware of the organizational meetings, and as this activity (the organization of volunteers) is to some degree in cooperation with the Slate Committee, any expenditures made for the organizational meetings would be on behalf of the Slate Committee. If expenses exceeding one hundred dollars (\$100) are paid for by any one or a group¹ of the volunteers, or anyone other than the Slate Committee, they would constitute in-kind contributions to the Slate Committee.

¹ KRS 121A.050(3) prohibits the bundling of funds to avoid the \$100 requirement for in-kind contributions.

Even if they do not exceed \$100?

If these expenses do not exceed one hundred dollars (\$100) in the aggregate they are not contributions.

2. If a supporter of the slate of candidates makes Expenditures for travel expenses, such as meals, lodging and long distance phone calls, while attending the event detailed in question number 1, are those Expenditures a “contribution” if they exceed \$100? Even if they do not exceed \$100?

Generally, individual services provided without compensation to a slate of candidates do not constitute contributions. See KRS 121A.010(11)(b)(1); 32 KAR 2:170(5). Volunteerism usually consists of grass-roots (i.e. home or community) activities that would not require extensive travel. However, KRS Chapters 121 and 121A recognizes that professional services also may be volunteered. See KREF AO 93-025 (citing KRS 121.015(7)(a), KRS 121.160(6)). Further, the personal expenses of a volunteer that are incidental to his or her service and that are paid for by the volunteer personally are impliedly exempted.

Recently, the Registry considered a similar issue in Fortner v. Miller, KREF No. 98-206 (January 21, 1999), in which a campaign treasurer’s use of her own home was deemed incidental to her volunteer services.² Another example of incidental expenses is the statutory exemption for expenditures totaling three hundred dollars (\$300) or less paid by an individual “in connection with an event held in the individual’s home.” KRS 121A.010(11)(b)(2).

Therefore, travel and usual and normal subsistence expenses, which are incidental to a volunteer’s service and are paid for by the volunteer from his or her personal funds, are not contributions.

3. If the answers to questions 1 and 2 above are that those expenditures are not “contributions,” is the answer different if members of the Patton-Henry for Kentucky Committee or its agents, are in attendance at such an event?

Regarding the answer to question 1, that expenses for organizational meetings paid for by persons other than the Slate Committee would constitute contributions, the answer would not be different if members of the Slate Committee or its agents attend the organizational meetings. However, unlike in the case of volunteers, expenses for the

² Note, however, that expenditures for additional equipment were correctly paid for by and reported by the campaign.

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attendance by Slate Committee members or agents, including travel, lodging, and meals would constitute campaign expenses, and if not reimbursed to the member or agent, would result in a contribution.

4. If the answers to questions 1 and 2 above are that those Expenditures are not "contributions," is the answer different if the Supporter making the expenditure is a member of an official steering committee, such as the Patton-Henry Board of Directors, (which committee has no role or part in discussing, planning or organizing expenditures of the Patton-Henry for Kentucky Committee).

See response to Question 3.

If you have any further questions, please do not hesitate to contact the auditor assigned to the Slate Committee or any other Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jw